

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 508

Citations Affected: IC 22-3.

Synopsis: Worker's compensation. Conference committee report for ESB 508. Exempts from worker's compensation and occupational disease law: (1) a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code to the extent the corporation enters into an independent contractor agreement for the performance of youth coaching services on a part-time basis; and (2) the coaches with whom the corporation enters into the agreement. Increases the worker's compensation burial expense allowance to \$7,500. **(This conference committee report: (1) removes a provision that requires an employer to make payment to an employee, by semimonthly or biweekly payment, for all wages earned to a date not more than ten business days prior to the date of payment; (2) removes language specifying that, if an employee has left employment voluntarily and the employer does not know the whereabouts or address of the employee, the employer is not subject to payment of liquidated damages for the failure to pay wages timely until: (A) ten business days have elapsed after the employee has made a demand for the wages; or (B) the employee has given the employer the employee's address; (3) removes a provision that permits a wage assignment for payment for: (A) uniforms; and (B) tools and portable equipment; (4) removes a provision increasing to \$3,000 the amount of the maximum wage claim for which the commissioner of the department of labor may take an assignment; (5) removes provisions that repeal and relocate language making it a Class C infraction for an employer to sell merchandise or supplies to an employee for a price higher than to the public; (6) removes a provision that repeals a chapter concerning the regulation of wage payments, which includes the following provisions: (A) a provision requiring an employer to pay employees in commercial paper; (B) a duplicate provision concerning frequency of wage payments; and (C) a provision containing outdated language concerning liens of laborers; (7) removes a provision requiring that notice of a meeting of a committee to determine the common construction wage must meet requirements for public notice and be published on the Internet; (8) removes a provision that increases to \$250,000 the actual construction costs of a public works project to which the common construction wage applies; and (9) removes provisions increasing worker's compensation and occupational disease benefits and the compensation for permanent partial impairment.)**

Effective: July 1, 2005.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 508 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 22-3-2-2 IS AMENDED TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Every employer and every
- 4 employee, except as stated in IC 22-3-2 through IC 22-3-6, shall
- 5 comply with the provisions of IC 22-3-2 through IC 22-3-6 respectively
- 6 to pay and accept compensation for personal injury or death by accident
- 7 arising out of and in the course of the employment, and shall be bound
- 8 thereby.
- 9 (b) IC 22-3-2 through IC 22-3-6 does not apply to railroad employees
- 10 engaged in train service as:
- 11 (1) engineers;
- 12 (2) firemen;
- 13 (3) conductors;
- 14 (4) brakemen;
- 15 (5) flagmen;
- 16 (6) baggagemen; or
- 17 (7) foremen in charge of yard engines and helpers assigned thereto.
- 18 (c) IC 22-3-2 through IC 22-3-6 does not apply to employees of

1 municipal corporations in Indiana who are members of:

2 (1) the fire department or police department of any such
3 municipality; and

4 (2) a firefighters' pension fund or of a police officers' pension fund.

5 However, if the common council elects to purchase and procure
6 worker's compensation insurance to insure said employees with respect
7 to medical benefits under IC 22-3-2 through IC 22-3-6, the medical
8 provisions of IC 22-3-2 through IC 22-3-6 apply to members of the fire
9 department or police department of any such municipal corporation
10 who are also members of a firefighters' pension fund or a police
11 officers' pension fund.

12 **(d) IC 22-3-2 through IC 22-3-6 do not apply to the following:**

13 **(1) A person who enters into an independent contractor**
14 **agreement with a nonprofit corporation that is recognized as**
15 **tax exempt under Section 501(c)(3) of the Internal Revenue**
16 **Code (as defined in IC 6-3-1-11(a)) to perform youth coaching**
17 **services on a part-time basis.**

18 **(2) A nonprofit corporation that is recognized as tax exempt**
19 **under Section 501(c)(3) of the Internal Revenue Code (as**
20 **defined in IC 6-3-1-11(a)) to the extent the corporation enters**
21 **into an independent contractor agreement with a person for**
22 **the performance of youth coaching services on a part-time**
23 **basis.**

24 ~~(d)~~ **(e)** When any municipal corporation purchases or procures
25 worker's compensation insurance covering members of the fire
26 department or police department who are also members of a firefighters'
27 pension fund or a police officers' pension fund, and pays the premium
28 or premiums for such insurance, the payment of such premiums is a
29 legal and allowable expenditure of funds of any municipal corporation.

30 ~~(e)~~ **(f)** Except as provided in ~~subsection (f)~~, **subsection (g)**, where the
31 common council has procured worker's compensation insurance under
32 this section, any member of such fire department or police department
33 employed in the city carrying such worker's compensation insurance
34 under this section is limited to recovery of medical and surgical care,
35 medicines, laboratory, curative and palliative agents and means, x-ray,
36 diagnostic and therapeutic services to the extent that such services are
37 provided for in the worker's compensation policy procured by such city,
38 and shall not also recover in addition to that policy for such same
39 benefits provided in IC 36-8-4.

40 ~~(f)~~ **(g)** If the medical benefits provided under a worker's
41 compensation policy procured by the common council terminate for
42 any reason before the police officer or firefighter is fully recovered, the
43 common council shall provide medical benefits that are necessary until
44 the police officer or firefighter is no longer in need of medical care.

45 ~~(g)~~ **(h)** The provisions of IC 22-3-2 through IC 22-3-6 apply to:

46 (1) members of the Indiana general assembly; and

47 (2) field examiners of the state board of accounts.

48 SECTION 2. IC 22-3-2-9 IS AMENDED TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2005]: Sec. 9. (a) IC 22-3-2 through IC 22-3-6 shall not apply to:

- (1) casual laborers (as defined in IC 22-3-6-1); ~~not to~~
- (2) farm or agricultural employees; ~~not to~~
- (3) household employees; ~~not to or~~
- (4) **a person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis.**

IC 22-3-2 through IC 22-3-6 do not apply to the employers or contractors of such the persons listed in this subsection.

(b) An employer who is exempt under this section from the operation of the compensation provisions of this chapter may at any time waive such exemption and thereby accept the provisions of this chapter by giving notice as provided in subsection (c).

(c) The notice of acceptance referred to in subsection (b) shall be given thirty (30) days prior to any accident resulting in injury or death, provided that if any such injury occurred less than thirty (30) days after the date of employment, notice of acceptance given at the time of employment shall be sufficient notice thereof. The notice shall be in writing or print in a substantial form prescribed by the worker's compensation board and shall be given by the employer by posting the same in a conspicuous place in the plant, shop, office, room, or place where the employee is employed, or by serving it personally upon ~~him~~; **the employee**; and shall be given by the employee by sending the same in registered letter addressed to the employer at ~~his~~ **the employer's** last known residence or place of business, or by giving it personally to the employer, or any of ~~his~~ **the employer's** agents upon whom a summons in civil actions may be served under the laws of the state.

(d) A copy of the notice in prescribed form shall also be filed with the worker's compensation board, within five (5) days after its service in such manner upon the employee or employer.

SECTION 3. IC 22-3-2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) As used in this section, "person" does not include:

- (1) an owner who contracts for performance of work on the owner's owner occupied residential property; **or**
- (2) **a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.**

(b) The state, any political division thereof, any municipal corporation, any corporation, limited liability company, partnership, or person, contracting for the performance of any work exceeding one thousand dollars (\$1,000) in value by a contractor subject to the

1 compensation provisions of IC 22-3-2 through IC 22-3-6, without
 2 exacting from such contractor a certificate from the worker's
 3 compensation board showing that such contractor has complied with
 4 section 5 of this chapter, IC 22-3-5-1, and IC 22-3-5-2, shall be liable
 5 to the same extent as the contractor for compensation, physician's fees,
 6 hospital fees, nurse's charges, and burial expenses on account of the
 7 injury or death of any employee of such contractor, due to an accident
 8 arising out of and in the course of the performance of the work covered
 9 by such contract.

10 (c) Any contractor who shall sublet any contract for the performance
 11 of any work, to a subcontractor subject to the compensation provisions
 12 of IC 22-3-2 through IC 22-3-6, without obtaining a certificate from the
 13 worker's compensation board showing that such subcontractor has
 14 complied with section 5 of this chapter, IC 22-3-5-1, and IC 22-3-5-2,
 15 shall be liable to the same extent as such subcontractor for the payment
 16 of compensation, physician's fees, hospital fees, nurse's charges, and
 17 burial expenses on account of the injury or death of any employee of
 18 such subcontractor due to an accident arising out of and in the course
 19 of the performance of the work covered by such subcontract.

20 (d) The state, any political division thereof, any municipal
 21 corporation, any corporation, limited liability company, partnership,
 22 person, or contractor paying compensation, physician's fees, hospital
 23 fees, nurse's charges, or burial expenses under this section may recover
 24 the amount paid or to be paid from any person who, independently of
 25 such provisions, would have been liable for the payment thereof and
 26 may, in addition, recover the litigation expenses and attorney's fees
 27 incurred in the action before the worker's compensation board as well
 28 as the litigation expenses and attorney's fees incurred in an action to
 29 collect the compensation, medical expenses, and burial expenses.

30 (e) Every claim filed with the worker's compensation board under this
 31 section shall be instituted against all parties liable for payment. The
 32 worker's compensation board, in an award under subsection (b), shall
 33 fix the order in which said parties shall be exhausted, beginning with
 34 the immediate employer, and, in an award under subsection (c), shall
 35 determine whether the subcontractor has the financial ability to pay the
 36 compensation and medical expenses when due and, if not, shall order
 37 the contractor to pay the compensation and medical expenses.

38 SECTION 4. IC 22-3-3-21 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 21. In ~~all~~ cases of the
 40 death of an employee from an injury by an accident arising out of and
 41 in the course of the employee's employment under ~~such~~ circumstances
 42 that the employee would have been entitled to compensation if death
 43 had not resulted, the employer shall pay the burial expenses of such
 44 employee, not exceeding ~~six~~ **seven** thousand **five hundred** dollars
 45 ~~(\$6,000): (\$7,500).~~

46 SECTION 5. IC 22-3-6-1, AS AMENDED BY HEA1288-2005,
 47 SECTION 182, IS AMENDED TO READ AS FOLLOWS
 48 [EFFECTIVE JULY 1, 2005]: Sec. 1. In IC 22-3-2 through IC 22-3-6,

1 unless the context otherwise requires:

2 (a) "Employer" includes the state and any political subdivision, any
 3 municipal corporation within the state, any individual or the legal
 4 representative of a deceased individual, firm, association, limited
 5 liability company, or corporation or the receiver or trustee of the same,
 6 using the services of another for pay. A parent corporation and its
 7 subsidiaries shall each be considered joint employers of the
 8 corporation's, the parent's, or the subsidiaries' employees for purposes
 9 of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of
 10 employees shall each be considered joint employers of the employees
 11 provided by the lessor to the lessee for purposes of IC 22-3-2-6 and
 12 IC 22-3-3-31. If the employer is insured, the term includes the
 13 employer's insurer so far as applicable. However, the inclusion of an
 14 employer's insurer within this definition does not allow an employer's
 15 insurer to avoid payment for services rendered to an employee with the
 16 approval of the employer. The term also includes an employer that
 17 provides on-the-job training under the federal School to Work
 18 Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in
 19 IC 22-3-2-2.5. **The term does not include a nonprofit corporation**
 20 **that is recognized as tax exempt under Section 501(c)(3) of the**
 21 **Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent**
 22 **the corporation enters into an independent contractor agreement**
 23 **with a person for the performance of youth coaching services on a**
 24 **part-time basis.**

25 (b) "Employee" means every person, including a minor, in the service
 26 of another, under any contract of hire or apprenticeship, written or
 27 implied, except one whose employment is both casual and not in the
 28 usual course of the trade, business, occupation, or profession of the
 29 employer.

30 (1) An executive officer elected or appointed and empowered in
 31 accordance with the charter and bylaws of a corporation, other than
 32 a municipal corporation or governmental subdivision or a
 33 charitable, religious, educational, or other nonprofit corporation, is
 34 an employee of the corporation under IC 22-3-2 through IC 22-3-6.

35 (2) An executive officer of a municipal corporation or other
 36 governmental subdivision or of a charitable, religious, educational,
 37 or other nonprofit corporation may, notwithstanding any other
 38 provision of IC 22-3-2 through IC 22-3-6, be brought within the
 39 coverage of its insurance contract by the corporation by
 40 specifically including the executive officer in the contract of
 41 insurance. The election to bring the executive officer within the
 42 coverage shall continue for the period the contract of insurance is
 43 in effect, and during this period, the executive officers thus brought
 44 within the coverage of the insurance contract are employees of the
 45 corporation under IC 22-3-2 through IC 22-3-6.

46 (3) Any reference to an employee who has been injured, when the
 47 employee is dead, also includes the employee's legal
 48 representatives, dependents, and other persons to whom

- 1 compensation may be payable.
- 2 (4) An owner of a sole proprietorship may elect to include the
 3 owner as an employee under IC 22-3-2 through IC 22-3-6 if the
 4 owner is actually engaged in the proprietorship business. If the
 5 owner makes this election, the owner must serve upon the owner's
 6 insurance carrier and upon the board written notice of the election.
 7 No owner of a sole proprietorship may be considered an employee
 8 under IC 22-3-2 through IC 22-3-6 until the notice has been
 9 received. If the owner of a sole proprietorship is an independent
 10 contractor in the construction trades and does not make the election
 11 provided under this subdivision, the owner must obtain an affidavit
 12 of exemption under IC 22-3-2-14.5.
- 13 (5) A partner in a partnership may elect to include the partner as an
 14 employee under IC 22-3-2 through IC 22-3-6 if the partner is
 15 actually engaged in the partnership business. If a partner makes this
 16 election, the partner must serve upon the partner's insurance carrier
 17 and upon the board written notice of the election. No partner may
 18 be considered an employee under IC 22-3-2 through IC 22-3-6
 19 until the notice has been received. If a partner in a partnership is an
 20 independent contractor in the construction trades and does not
 21 make the election provided under this subdivision, the partner must
 22 obtain an affidavit of exemption under IC 22-3-2-14.5.
- 23 (6) Real estate professionals are not employees under IC 22-3-2
 24 through IC 22-3-6 if:
- 25 (A) they are licensed real estate agents;
 - 26 (B) substantially all their remuneration is directly related to sales
 27 volume and not the number of hours worked; and
 - 28 (C) they have written agreements with real estate brokers stating
 29 that they are not to be treated as employees for tax purposes.
- 30 (7) A person is an independent contractor in the construction trades
 31 and not an employee under IC 22-3-2 through IC 22-3-6 if the
 32 person is an independent contractor under the guidelines of the
 33 United States Internal Revenue Service.
- 34 (8) An owner-operator that provides a motor vehicle and the
 35 services of a driver under a written contract that is subject to
 36 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor
 37 carrier is not an employee of the motor carrier for purposes of
 38 IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be
 39 covered and have the owner-operator's drivers covered under a
 40 worker's compensation insurance policy or authorized
 41 self-insurance that insures the motor carrier if the owner-operator
 42 pays the premiums as requested by the motor carrier. An election
 43 by an owner-operator under this subdivision does not terminate the
 44 independent contractor status of the owner-operator for any
 45 purpose other than the purpose of this subdivision.
- 46 (9) A member or manager in a limited liability company may elect
 47 to include the member or manager as an employee under IC 22-3-2
 48 through IC 22-3-6 if the member or manager is actually engaged in

the limited liability company business. If a member or manager makes this election, the member or manager must serve upon the member's or manager's insurance carrier and upon the board written notice of the election. A member or manager may not be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received.

(10) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth in IC 22-3-2-2.5.

(11) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis is not an employee for purposes of IC 22-3-2 through IC 22-3-6.

(c) "Minor" means an individual who has not reached seventeen (17) years of age.

(1) Unless otherwise provided in this subsection, a minor employee shall be considered as being of full age for all purposes of IC 22-3-2 through IC 22-3-6.

(2) If the employee is a minor who, at the time of the accident, is employed, required, suffered, or permitted to work in violation of IC 20-33-3-35, the amount of compensation and death benefits, as provided in IC 22-3-2 through IC 22-3-6, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the injury or death of the minor, and the employer shall be liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a student performing services for an employer as part of an approved program under IC 20-37-2-7 shall be considered a full-time employee for the purpose of computing compensation for permanent impairment under IC 22-3-3-10. The average weekly wages for such a student shall be calculated as provided in subsection (d)(4).

(4) The rights and remedies granted in this subsection to a minor under IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident shall exclude all rights and remedies of the minor, the minor's parents, or the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of the injury or death. This subsection does not apply to minors who have reached seventeen (17) years of age.

(d) "Average weekly wages" means the earnings of the injured employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of injury, divided by fifty-two (52), except as follows:

(1) If the injured employee lost seven (7) or more calendar days during this period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted.

(2) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employee's employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages, as defined in this subsection, regard shall be had to the average weekly amount which during the fifty-two (52) weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

(3) Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of ~~this~~ **the employee's** earnings.

(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training program under IC 20-37-2-7, the following formula shall be used. Calculate the product of:

(A) the student employee's hourly wage rate; multiplied by

(B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(g) "Billing review standard" means the data used by a billing review service to determine pecuniary liability.

(h) "Community" means a geographic service area based on zip code

districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.

(7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(i) "Medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under IC 22-3-2 through IC 22-3-6.

(j) "Pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 6. IC 22-3-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Every employer and every employee, except as stated in this chapter, shall comply with this chapter, requiring the employer and employee to pay and accept compensation for disablement or death by occupational disease arising out of and in the course of the employment, and shall be bound thereby.

(b) This chapter does not apply to the following:

(1) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis.

(2) A nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.

~~(b)~~ **(c)** This chapter does not apply to employees of municipal corporations in Indiana who are members of:

(1) the fire department or police department of any such

1 municipality; and

2 (2) a firefighters' pension fund or a police officers' pension fund.
 3 However, if the common council elects to purchase and procure
 4 worker's occupational disease insurance to insure said employees with
 5 respect to medical benefits under this chapter, the medical provisions
 6 apply to members of the fire department or police department of any
 7 such municipal corporation who are also members of a firefighters'
 8 pension fund or a police officers' pension fund.

9 ~~(c)~~ (d) When any municipal corporation purchases or procures
 10 worker's occupational disease insurance covering members of the fire
 11 department or police department who are also members of a firefighters'
 12 pension fund or a police officers' pension fund and pays the premium
 13 or premiums for the insurance, the payment of the premiums is a legal
 14 and allowable expenditure of funds of any municipal corporation.

15 ~~(d)~~ (e) Except as provided in ~~subsection (c)~~, **subsection (f)**, where the
 16 common council has procured worker's occupational disease insurance
 17 as provided under this section, any member of the fire department or
 18 police department employed in the city carrying the worker's
 19 occupational disease insurance under this section is limited to recovery
 20 of medical and surgical care, medicines, laboratory, curative and
 21 palliative agents and means, x-ray, diagnostic and therapeutic services
 22 to the extent that the services are provided for in the worker's
 23 occupational disease policy so procured by the city, and may not also
 24 recover in addition to that policy for the same benefits provided in
 25 IC 36-8-4.

26 ~~(e)~~ (f) If the medical benefits provided under a worker's occupational
 27 disease policy procured by the common council terminate for any
 28 reason before the police officer or firefighter is fully recovered, the
 29 common council shall provide medical benefits that are necessary until
 30 the police officer or firefighter is no longer in need of medical care.

31 ~~(f)~~ (g) Nothing in this section affects the rights and liabilities of
 32 employees and employers had by them prior to April 1, 1963, under
 33 this chapter.

34 SECTION 7. IC 22-3-7-9 IS AMENDED TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) As used in this chapter,
 36 "employer" includes the state and any political subdivision, any
 37 municipal corporation within the state, any individual or the legal
 38 representative of a deceased individual, firm, association, limited
 39 liability company, or corporation or the receiver or trustee of the same,
 40 using the services of another for pay. A parent corporation and its
 41 subsidiaries shall each be considered joint employers of the
 42 corporation's, the parent's, or the subsidiaries' employees for purposes
 43 of sections 6 and 33 of this chapter. Both a lessor and a lessee of
 44 employees shall each be considered joint employers of the employees
 45 provided by the lessor to the lessee for purposes of sections 6 and 33 of
 46 this chapter. The term also includes an employer that provides
 47 on-the-job training under the federal School to Work Opportunities Act
 48 (20 U.S.C. 6101 et seq.) to the extent set forth under section 2.5 of this

chapter. If the employer is insured, the term includes ~~his~~ **the employer's** insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. **The term does not include a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.**

(b) As used in this chapter, "employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer. For purposes of this chapter the following apply:

(1) Any reference to an employee who has suffered disablement, when the employee is dead, also includes ~~his~~ **the employee's** legal representative, dependents, and other persons to whom compensation may be payable.

(2) An owner of a sole proprietorship may elect to include ~~himself~~ **the owner** as an employee under this chapter if ~~he~~ **the owner** is actually engaged in the proprietorship business. If the owner makes this election, ~~he~~ **the owner** must serve upon ~~his~~ **the owner's** insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under this chapter unless the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under section 34.5 of this chapter.

(3) A partner in a partnership may elect to include ~~himself~~ **the partner** as an employee under this chapter if ~~he~~ **the partner** is actually engaged in the partnership business. If a partner makes this election, ~~he~~ **the partner** must serve upon ~~his~~ **the partner's** insurance carrier and upon the board written notice of the election. No partner may be considered an employee under this chapter until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under section 34.5 of this chapter.

(4) Real estate professionals are not employees under this chapter if:

- (A) they are licensed real estate agents;
- (B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and
- (C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(5) A person is an independent contractor in the construction trades and not an employee under this chapter if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(6) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of this chapter. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(7) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth under section 2.5 of this chapter.

(8) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis is not an employee for purposes of this chapter.

(c) As used in this chapter, "minor" means an individual who has not reached seventeen (17) years of age. A minor employee shall be considered as being of full age for all purposes of this chapter. However, if the employee is a minor who, at the time of the last exposure, is employed, required, suffered, or permitted to work in violation of the child labor laws of this state, the amount of compensation and death benefits, as provided in this chapter, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the disability or death of the minor, and the employer shall be wholly liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age, and who at the time of the last exposure is employed, suffered, or permitted to work at any occupation which is not prohibited by law, the provisions of this subsection prescribing double the amount otherwise recoverable do not apply. The rights and remedies granted to a minor under this chapter on account of disease shall exclude all rights and remedies of the minor, his parents, his personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of any disease.

(d) This chapter does not apply to casual laborers as defined in subsection (b), nor to farm or agricultural employees, nor to household

employees, nor to railroad employees engaged in train service as engineers, firemen, conductors, brakemen, flagmen, baggagemen, or foremen in charge of yard engines and helpers assigned thereto, nor to their employers with respect to these employees. Also, this chapter does not apply to employees or their employers with respect to employments in which the laws of the United States provide for compensation or liability for injury to the health, disability, or death by reason of diseases suffered by these employees.

(e) As used in this chapter, "disablement" means the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom ~~he~~ **the employee** claims compensation or equal wages in other suitable employment, and "disability" means the state of being so incapacitated.

(f) For the purposes of this chapter, no compensation shall be payable for or on account of any occupational diseases unless disablement, as defined in subsection (e), occurs within two (2) years after the last day of the last exposure to the hazards of the disease except for the following:

(1) In all cases of occupational diseases caused by the inhalation of silica dust or coal dust, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within three (3) years after the last day of the last exposure to the hazards of the disease.

(2) In all cases of occupational disease caused by the exposure to radiation, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within two (2) years from the date on which the employee had knowledge of the nature of ~~his~~ **the employee's** occupational disease or, by exercise of reasonable diligence, should have known of the existence of such disease and its causal relationship to ~~his~~ **the employee's** employment.

(3) In all cases of occupational diseases caused by the inhalation of asbestos dust, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within three (3) years after the last day of the last exposure to the hazards of the disease if the last day of the last exposure was before July 1, 1985.

(4) In all cases of occupational disease caused by the inhalation of asbestos dust in which the last date of the last exposure occurs on or after July 1, 1985, and before July 1, 1988, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within twenty (20) years after the last day of the last exposure.

(5) In all cases of occupational disease caused by the inhalation of asbestos dust in which the last date of the last exposure occurs on or after July 1, 1988, no compensation shall be payable unless disablement (as defined in subsection (e)) occurs within thirty-five (35) years after the last day of the last exposure.

(g) For the purposes of this chapter, no compensation shall be payable

for or on account of death resulting from any occupational disease unless death occurs within two (2) years after the date of disablement.

However, this subsection does not bar compensation for death:

(1) where death occurs during the pendency of a claim filed by an employee within two (2) years after the date of disablement and which claim has not resulted in a decision or has resulted in a decision which is in process of review or appeal; or

(2) where, by agreement filed or decision rendered, a compensable period of disability has been fixed and death occurs within two (2) years after the end of such fixed period, but in no event later than three hundred (300) weeks after the date of disablement.

(h) As used in this chapter, "billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(i) As used in this chapter, "billing review standard" means the data used by a billing review service to determine pecuniary liability.

(j) As used in this chapter, "community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.

(7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(k) As used in this chapter, "medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under this chapter.

(l) As used in this chapter, "pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under this chapter in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 8. IC 22-3-7-15 IS AMENDED TO READ AS

1 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. In ~~all~~ cases of the
 2 death of an employee from an occupational disease arising out of and
 3 in the course of the employee's employment under ~~such~~ circumstances
 4 that the employee would have been entitled to compensation if death
 5 had not resulted, the employer shall pay the burial expenses of such
 6 employee, not exceeding ~~six~~ **seven** thousand **five hundred** dollars
 7 ~~(\$6,000)~~ **(\$7,500)**.

8 SECTION 9. IC 22-3-7-34 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 34. (a) As used in this
 10 section, "person" does not include:

11 **(1) an owner who contracts for performance of work on the owner's**
 12 **owner occupied residential property; or**

13 **(2) a nonprofit corporation that is recognized as tax exempt**
 14 **under Section 501(c)(3) of the Internal Revenue Code (as**
 15 **defined in IC 6-3-1-11(a)) to the extent the corporation enters**
 16 **into an independent contractor agreement with a person for**
 17 **the performance of youth coaching services on a part-time**
 18 **basis.**

19 (b) Every employer bound by the compensation provisions of this
 20 chapter, except the state, counties, townships, cities, towns, school
 21 cities, school towns, school townships, other municipal corporations,
 22 state institutions, state boards, and state commissions, shall insure the
 23 payment of compensation to the employer's employees and their
 24 dependents in the manner provided in this chapter, or procure from the
 25 worker's compensation board a certificate authorizing the employer to
 26 carry such risk without insurance. While that insurance or certificate
 27 remains in force, the employer, or those conducting the employer's
 28 business, and the employer's occupational disease insurance carrier
 29 shall be liable to any employee and the employee's dependents for
 30 disablement or death from occupational disease arising out of and in the
 31 course of employment only to the extent and in the manner specified in
 32 this chapter.

33 (c) Every employer who, by election, is bound by the compensation
 34 provisions of this chapter, except those exempted from the provisions
 35 by subsection (b), shall:

36 **(1) insure and keep insured the employer's liability under this**
 37 **chapter in some corporation, association, or organization**
 38 **authorized to transact the business of worker's compensation**
 39 **insurance in this state; or**

40 **(2) furnish to the worker's compensation board satisfactory proof**
 41 **of the employer's financial ability to pay the compensation in the**
 42 **amount and manner and when due as provided for in this chapter.**

43 In the latter case the board may require the deposit of an acceptable
 44 security, indemnity, or bond to secure the payment of compensation
 45 liabilities as they are incurred.

46 (d) Every employer required to carry insurance under this section
 47 shall file with the worker's compensation board in the form prescribed
 48 by it, within ten (10) days after the termination of the employer's

1 insurance by expiration or cancellation, evidence of the employer's
2 compliance with subsection (c) and other provisions relating to the
3 insurance under this chapter. The venue of all criminal actions under
4 this section lies in the county in which the employee was last exposed
5 to the occupational disease causing disablement. The prosecuting
6 attorney of the county shall prosecute all violations upon written
7 request of the board. The violations shall be prosecuted in the name of
8 the state.

9 (e) Whenever an employer has complied with subsection (c) relating
10 to self-insurance, the worker's compensation board shall issue to the
11 employer a certificate which shall remain in force for a period fixed by
12 the board, but the board may, upon at least thirty (30) days notice, and
13 a hearing to the employer, revoke the certificate, upon presentation of
14 satisfactory evidence for the revocation. After the revocation, the board
15 may grant a new certificate to the employer upon the employer's
16 petition, and satisfactory proof of the employer's financial ability.

17 (f)(1) Subject to the approval of the worker's compensation board,
18 any employer may enter into or continue any agreement with the
19 employer's employees to provide a system of compensation, benefit, or
20 insurance in lieu of the compensation and insurance provided by this
21 chapter. A substitute system may not be approved unless it confers
22 benefits upon employees and their dependents at least equivalent to the
23 benefits provided by this chapter. It may not be approved if it requires
24 contributions from the employees unless it confers benefits in addition
25 to those provided under this chapter, which are at least commensurate
26 with such contributions.

27 (f)(2) The substitute system may be terminated by the worker's
28 compensation board on reasonable notice and hearing to the interested
29 parties, if it appears that the same is not fairly administered or if its
30 operation shall disclose latent defects threatening its solvency, or if for
31 any substantial reason it fails to accomplish the purpose of this chapter.
32 On termination, the board shall determine the proper distribution of all
33 remaining assets, if any, subject to the right of any party in interest to
34 take an appeal to the court of appeals.

35 (g)(1) No insurer shall enter into or issue any policy of insurance
36 under this chapter until its policy form has been submitted to and
37 approved by the worker's compensation board. The board shall not
38 approve the policy form of any insurance company until the company
39 shall file with it the certificate of the insurance commissioner showing
40 that the company is authorized to transact the business of worker's
41 compensation insurance in Indiana. The filing of a policy form by any
42 insurance company or reciprocal insurance association with the board
43 for approval constitutes on the part of the company or association a
44 conclusive and unqualified acceptance of each of the compensation
45 provisions of this chapter, and an agreement by it to be bound by the
46 compensation provisions of this chapter.

47 (g)(2) All policies of insurance companies and of reciprocal insurance
48 associations, insuring the payment of compensation under this chapter,

1 shall be conclusively presumed to cover all the employees and the
2 entire compensation liability of the insured under this chapter in all
3 cases in which the last day of the exposure rendering the employer
4 liable is within the effective period of such policy.

5 (g)(3) Any provision in any such policy attempting to limit or modify
6 the liability of the company or association insuring the same shall be
7 wholly void.

8 (g)(4) Every policy of any company or association shall be deemed
9 to include the following provisions:

10 "(A) The insurer assumes in full all the obligations to pay
11 physician's fees, nurse's charges, hospital supplies, burial expenses,
12 compensation or death benefits imposed upon or accepted by the
13 insured under this chapter.

14 (B) This policy is subject to the provisions of this chapter relative
15 to the liability of the insured to pay physician's fees, nurse's
16 charges, hospital services, hospital supplies, burial expenses,
17 compensation or death benefits to and for such employees, the
18 acceptance of such liability by the insured, the adjustment, trial and
19 adjudication of claims for such physician's fees, nurse's charges,
20 hospital services, hospital supplies, burial expenses, compensation,
21 or death benefits.

22 (C) Between this insurer and the employee, notice to or knowledge
23 of the occurrence of the disablement on the part of the insured (the
24 employer) shall be notice or knowledge thereof, on the part of the
25 insurer. The jurisdiction of the insured (the employer) for the
26 purpose of this chapter is the jurisdiction of this insurer, and this
27 insurer shall in all things be bound by and shall be subject to the
28 awards, judgments and decrees rendered against the insured (the
29 employer) under this chapter.

30 (D) This insurer will promptly pay to the person entitled to the
31 same all benefits conferred by this chapter, including all physician's
32 fees, nurse's charges, hospital services, hospital supplies, burial
33 expenses, and all installments of compensation or death benefits
34 that may be awarded or agreed upon under this chapter. The
35 obligation of this insurer shall not be affected by any default of the
36 insured (the employer) after disablement or by any default in
37 giving of any notice required by this policy, or otherwise. This
38 policy is a direct promise by this insurer to the person entitled to
39 physician's fees, nurse's charges, fees for hospital services, charges
40 for hospital services, charges for hospital supplies, charges for
41 burial, compensation, or death benefits, and shall be enforceable in
42 the name of the person.

43 (E) Any termination of this policy by cancellation shall not be
44 effective as to employees of the insured covered hereby unless at
45 least thirty (30) days prior to the taking effect of such cancellation,
46 a written notice giving the date upon which such termination is to
47 become effective has been received by the worker's compensation
48 board of Indiana at its office in Indianapolis, Indiana.

1 (F) This policy shall automatically expire one (1) year from the
2 effective date of the policy, unless the policy covers a period of
3 three (3) years, in which event, it shall automatically expire three
4 (3) years from the effective date of the policy. The termination
5 either of a one (1) year or a three (3) year policy, is effective as to
6 the employees of the insured covered by the policy."

7 (g)(5) All claims for compensation, nurse's charges, hospital services,
8 hospital supplies, physician's fees, or burial expenses may be made
9 directly against either the employer or the insurer or both, and the
10 award of the worker's compensation board may be made against either
11 the employer or the insurer or both.

12 (g)(6) If any insurer shall fail to pay any final award or judgment
13 (except during the pendency of an appeal) rendered against it, or its
14 insured, or, if it shall fail to comply with this chapter, the worker's
15 compensation board shall revoke the approval of its policy forms, and
16 shall not accept any further proofs of insurance from it until it shall
17 have paid the award or judgment or complied with this chapter, and
18 shall have resubmitted its policy form and received the approval of the
19 policy by the industrial board.

20 (h) No policy of insurance covering the liability of an employer for
21 worker's compensation shall be construed to cover the liability of the
22 employer under this chapter for any occupational disease unless the
23 liability is expressly accepted by the insurance carrier issuing the policy
24 and is endorsed in that policy. The insurance or security in force to
25 cover compensation liability under this chapter shall be separate from
26 the insurance or security under IC 22-3-2 through IC 22-3-6. Any
27 insurance contract covering liability under either part of this article
28 need not cover any liability under the other.

29 (i) For the purpose of complying with subsection (c), groups of
30 employers are authorized to form mutual insurance associations or
31 reciprocal or interinsurance exchanges subject to any reasonable
32 conditions and restrictions fixed by the department of insurance. This
33 subsection does not apply to mutual insurance associations and
34 reciprocal or interinsurance exchanges formed and operating on or
35 before January 1, 1991, which shall continue to operate subject to the
36 provisions of this chapter and to such reasonable conditions and
37 restrictions as may be fixed by the worker's compensation board.

38 (j) Membership in a mutual insurance association or a reciprocal or
39 interinsurance exchange so proved, together with evidence of the
40 payment of premiums due, is evidence of compliance with subsection
41 (c).

42 (k) Any person bound under the compensation provisions of this
43 chapter, contracting for the performance of any work exceeding one
44 thousand dollars (\$1,000) in value, in which the hazard of an
45 occupational disease exists, by a contractor subject to the compensation
46 provisions of this chapter without exacting from the contractor a
47 certificate from the worker's compensation board showing that the
48 contractor has complied with subsections (b), (c), and (d), shall be

1 liable to the same extent as the contractor for compensation, physician's
2 fees, hospital fees, nurse's charges, and burial expenses on account of
3 the injury or death of any employee of such contractor, due to
4 occupational disease arising out of and in the course of the performance
5 of the work covered by such contract.

6 (l) Any contractor who sublets any contract for the performance of
7 any work to a subcontractor subject to the compensation provisions of
8 this chapter, without obtaining a certificate from the worker's
9 compensation board showing that the subcontractor has complied with
10 subsections (b), (c), and (d), is liable to the same extent as the
11 subcontractor for the payment of compensation, physician's fees,
12 hospital fees, nurse's charges, and burial expense on account of the
13 injury or death of any employee of the subcontractor due to
14 occupational disease arising out of and in the course of the performance
15 of the work covered by the subcontract.

16 (m) A person paying compensation, physician's fees, hospital fees,
17 nurse's charges, or burial expenses, under subsection (k) or (l), may
18 recover the amount paid or to be paid from any person who would
19 otherwise have been liable for the payment thereof and may, in
20 addition, recover the litigation expenses and attorney's fees incurred in
21 the action before the worker's compensation board as well as the
22 litigation expenses and attorney's fees incurred in an action to collect
23 the compensation, medical expenses, and burial expenses.

24 (n) Every claim filed with the worker's compensation board under this
25 section shall be instituted against all parties liable for payment. The
26 worker's compensation board, in an award under subsection (k), shall
27 fix the order in which such parties shall be exhausted, beginning with
28 the immediate employer and, in an award under subsection (l), shall
29 determine whether the subcontractor has the financial ability to pay the
30 compensation and medical expenses when due and, if not, shall order
31 the contractor to pay the compensation and medical expenses.

 (Reference is to ESB 508 as reprinted April 8, 2005.)

Conference Committee Report
on
Engrossed Senate Bill 508

Signed by:

Senator Clark
Chairperson

Representative Torr

Senator Lewis

Representative Cheney

Senate Conferees

House Conferees